THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.2659 OF 2006

Dated: 14-02-2006

Between

M/s. A.S. Raja Sons Enterprises Pvt.
Ltd., Rep. by its Director Dr.A.V. Siva
Prasad, S/o. A.S. Raja, Waltar Main
Road, Visakhapatnam, Andhra Pradesh.

...PETITIONER

AND

Municipal Corporation of Visakhapatnam,
Rep. by its Commissioner, Visakhapatnam
and another.

...RESPONDENTS

ORDER:

Petitioner-company questions the action of the respondents in not paying the compensation for its property admeasuring 278.36 Sq. yards with structures thereon bearing Municipal Door No.10-50-11/5 in town survey No.1031, Block No.45 of Ram Nagar, Waltar Main Road, Visakhapatnam as per the provisions of the Land Acquisition Act, 1894 duly calculating the quantum to be paid as per the market value of the property as per the Sub Registrar's valuation, solatium and other admissible payments and commencing demolition of the property.

Learned counsel for the petitioner-company submits that the petitioner-company is

registered under the Companies Act, 1956 and is the owner and possessor of land admeasuring 5235.2 Sq. meters + 278.36 Sq. meters. The petitioner-company applied for the grant of building permission vide its application dated 07.02.2005 for construction of basement floor for parking purpose in the said plot No.10-50-11/5, Visakhapatnam. The said application was processed. During the process of the application the petitioner-company filed an agreement dated 07.07.2005 stating that it has applied for permission to construct RCC structure for parking purpose and also it has no objection to handover the site admeasuring 278.36 Sq. meters for road widening, which falls in road widening towards East side of the site, on free of cost to the respondent corporation and also agreed to relinquish its ownership right over the said site.

Pursuant to the said road widening agreement the application of the petitioner-company has been considered vide BA.No.2005-ba-10218/ACP-1/G1, dated 12.07.2005 with reference to G.O.Ms.No.423 MA, dated 31.07.1998, as per the land use of sanctioned master plan of Visakhapatnam and zoning regulations issued thereunder and the provisions of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') read with rules in force for grant of permission observing that the petitioner has already surrendered the required area of 278.36 Sq. meters for road widening on free of cost to the respondent corporation and the petitioner shall not make any structures in the said site admeasuring 278.39 Sq. meters, failing which the Corporation will demolish the structure without issuing any notice.

Learned counsel for the petitioner further submits that the said action of the respondents in taking the said undertaking is illegal and contrary to Sections 125 of the Act and also Section 146 of the Act. He submits that under Section 125 of the Act every contract entered into by the Commissioner shall be entered in the manner prescribed and under Section 146 of the Act, the Commissioner is empowered to acquire any immovable property by an agreement of such terms at such rates or at such prices and every contract entered under Section 146(5) of the Act shall be executed by the Commissioner having the seal of the Corporation affixed thereto in the presence of two officers.

A perusal of the road widening agreement executed by the petitioner-company goes to show that the petitioner-company itself notarized the same; filed before the

Commissioner and the said agreement has been considered, accepted and acted upon for sanctioning the building plan and the said permission was accorded in view of the fact that the petitioner voluntarily surrendered the said land on free of cost with reference to G.O.Ms.No.423 Ma, dated 31.07.1998.

Having availed the benefit of the sanction for construction of basement floor for parking purpose, I am of the opinion that it is not open for the petitioner-company to contend that the said agreement has been obtained with coercion and fraud and the same is contrary to Sections 125 and 146(5) of the Act. Petitioner-company could not have taken the benefit of building sanction without surrendering the said land and at the same, questioning its own agreement agreeing to surrender the said land, in question, on free of cost without claiming any ownership is arbitrary. Therefore, I do not see any merits in the writ petition.

The writ petition is accordingly dismissed at the admission stage.

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V. ESWARAIAH, J

February 14, 2006

DSK